

## REMARKS

The Office Action of January 5, 2006 has been received and considered. Claims 3-7, 12-39 and 41-47 have been withdrawn pursuant to an election of species requirement. Claims 1 and 40 have been amended. Reconsideration of the application in view of the preceding amendments and following remarks, and allowance of the pending claims is respectfully requested. Each of the Examiner's rejections is discussed below.

### Section 112

Claims 1, 2, 8-11, and 40 have been rejected under 35 U.S.C. § 112, second paragraph, on the grounds that the phrase "the same material" lacks antecedent basis and renders the claims vague and indefinite.

Claims 1 and 40 have been amended above to rectify the antecedent basis issue, and are now believed to be clear and in proper form. An indication to that effect is respectfully requested

### Section 102

Claims 1 and 8-11 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,449,878 to Lyden ("Lyden"). This rejection is respectfully traversed.

Lyden discloses footwear with an upper 23 and a sole structure having a spring element 51 formed of superior spring element 47 and inferior spring element 50. Superior spring element 47 includes an anterior spring element 48 and a posterior spring element 49. Superior spring element 47 and inferior spring element 50 are typically connected to one another with fasteners 29. An anterior spacer 55 and posterior spacer 42 are positioned between anterior spring element 48 and posterior spring element 49.

Lyden fails to disclose or make obvious a heel plate assembly secured at one end thereof

to an upper plate, the heel plate assembly extending downwardly from the upper plate such that the heel plate assembly forms an acute angle with the upper plate, with a medial side of the heel plate assembly having a thickness greater than a thickness of a lateral side of the heel plate assembly, with the entire heel plate assembly being formed of a single material, as required by independent claim 1.

Rather, Lyden's heel plate is formed of two different materials. Spring element 51 is made of a resilient material such as metal, e.g., spring steel, a thermoplastic material, or a fiber composite material (col. 10, lines 62-64). Anterior spacer 55 and posterior spacer 42, on the other hand, are formed of a cushioning medium such as a natural or synthetic rubber material or a resilient elastomer such as polyurethane (col. 26, lines 34-37). One skilled in the art would not even be motivated to replace one of these materials with the other to form a heel plate formed of a single material since these materials have such very different characteristics.

Accordingly, the rejection is improper and should be withdrawn.

### **Section 103**

Claims 2 and 40 have been rejected under 35 U.S.C. § 103(a) over Lyden in view of U.S. Patent No. 6,092,314 to Rothbart ("Rothbart"). Rothbart is cited as disclosing a plurality of layers with varying widths as an alternative to a steady slope for a wedge shaped pad in footwear. This rejection is respectfully traversed.

Rothbart fails to overcome the deficiencies of Lyden noted above. Specifically, Rothbart fails to disclose or make obvious a heel plate assembly secured at one end thereof to an upper plate, the heel plate assembly extending downwardly from the upper plate such that the heel plate assembly forms an acute angle with the upper plate, with a medial side of the heel plate assembly having a thickness greater than a thickness of a lateral side of the heel plate assembly, with the

entire heel plate assembly being formed of a single material, as required by independent claim 1.

Rothbart also does not disclose or make obvious a heel plate assembly secured at one end thereof to the upper plate, the heel plate assembly extending downwardly from the upper plate such that the heel plate assembly forms an acute angle with the upper plate, the heel plate assembly comprising a first layer; a second layer positioned on the first layer and having a width less than a width of the first layer; and a third layer positioned on the second layer and having a width less than the width of the second layer, with the first layer, second layer and third layer being formed of a single material, as required by independent claim 40.

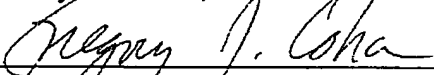
Rothbart discloses a wedge, labeled foot support system 60, which is positioned beneath the user's foot. Rothbart simply does not disclose the required heel plate assembly that is secured to an upper plate and formed of a single material. Accordingly, the rejection is improper and should be withdrawn.

#### Conclusion

Consequently, pending claims 1, 2, 8-11 and 40 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

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Respectfully submitted,

  
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Gregory J. Cohan, Reg. No. 40,959  
BANNER & WITCOFF, LTD.  
28 State Street, 28th Floor  
Boston, MA 02109  
(617) 720-9600